

46 Am. Jur. 2d Judges § 173

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

2. Time for Objection

§ 173. Independent or new proceedings as affecting time to object to judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(2)

A.L.R. Library

[Time for asserting disqualification of judge, and waiver of disqualification, 73 A.L.R.2d 1238](#)

Some authority holds that an indictment or complaint following dismissal of a complaint for the same charges does not initiate a new proceeding, and thus the right to challenge the judge expired after the specified statutory time of the judge's original assignment to the cause,¹ whereas other authority holds that a new indictment begins a separate matter for purposes of filing a peremptory challenge.² Where a defendant consents to a stipulated termination of trial following the prosecution's inability to proceed, the trial does not start anew on the date of termination, but rather there is only one case, for purposes of determining the timeliness of defendant's recusal motion.³ A postconviction proceeding is an extension of the prosecution, and once the parties have appeared before the judge, there is no automatic removal of the judge as of right.⁴ When a second action or proceeding that is considered to be a continuation of the earlier action or proceeding is assigned to the same trial judge who presided over the earlier action, a peremptory challenge against that judge is untimely and the litigants are not permitted to exercise such a peremptory challenge, since the motion was not made before commencement of the earlier trial.⁵

In the civil context, a proceeding requiring a supplemental pleading is not an independent civil action for purposes of filing a timely application for a change of judge.⁶

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Footnotes

- 1 Walker v. Walton, 2003-NMSC-014, 133 N.M. 766, 70 P.3d 756 (2003).
 - 2 Godoy v. Hantman, 205 Ariz. 104, 67 P.3d 700 (2003).
 - 3 Robles v. Superior Court, 110 Cal. App. 4th 1510, 2 Cal. Rptr. 3d 861 (2d Dist. 2003).
 - 4 Hooper v. State, 680 N.W.2d 89 (Minn. 2004).
 - 5 Maas v. Superior Court, 1 Cal. 5th 962, 209 Cal. Rptr. 3d 571, 383 P.3d 637 (Cal. 2016).
 - 6 In re S.M.H., 160 S.W.3d 355 (Mo. 2005).
- As to waiver of objection by participating in proceedings, see § 207.

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